

PT 97-60

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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ENGELWOOD HEALTH	)	
SERVICES, INC.	)	Docket Nos: 93-16-985
APPLICANT	)	
	)	
	)	
v.	)	Real Estate Exemptions
	)	for 1993 Tax Year
	)	
DEPARTMENT OF REVENUE	)	P.I.N S: 20-17-414-024
STATE OF ILLINOIS	)	through and
	)	including
	)	20-17-024-032
	)	
	)	
	)	Alan I. Marcus,
	)	Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Douglas A. Hanson of Schulyer, Roch & Zwirner appeared on behalf of Engelwood Health Services.

**SYNOPSIS:** The sole issue to be decided in this proceeding is whether nine parcels of real estate, identified by Cook County Parcel Index Numbers 20-17-414-024 through and including 20-17-414-032 (hereinafter collectively referred to as the "subject parcels" or the "subject properties"), were "actually and exclusively used for charitable or beneficent purposes..." within the meaning of 35 ILCS

205/19.7.<sup>1</sup> In relevant part, that provision exempts the following from real estate taxation:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States ... when such property is actually and exclusively used for such charitable or beneficent purposes and not leased or otherwise used with a view to profit ...[.]

The controversy arises as follows:

On November 1, 1993, Engelwood Health Services Organization (hereinafter the "applicant") filed an exemption complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). Said complaint alleged that each of the subject parcels was exempt from 1993 real estate taxes under Section 19.7. Dept. Ex. No. 1.

The Board reviewed applicant's complaint and made "no recommendation" to the Department of Revenue (hereinafter the "Department") as to the exempt status of each parcel. (*Id.*). The Department reviewed all information transmitted by the Board and issued a certificate denying all of the requested exemptions on October 13, 1995.

Applicant later filed a timely request for hearing as to the Department's denial and subsequently presented evidence at a formal

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1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939 (35 **ILCS** 205/1 et seq).

evidentiary hearing that took place on August 12, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcels not be exempt from 1993 real estate taxes.

**FINDINGS OF FACT:**

1. The Department's jurisdiction in this matter and its position therein, namely that the subject properties were neither in exempt use nor being developed for same during 1993, is established by admission into evidence of Dept. Ex. No. 1.

2. The subject parcels are located at 60th and Green Streets in Chicago, IL. A quit claim deed establishes that applicant acquired its ownership interest therein on March 8, 1990. Dept. Ex. No. 1.

3. An Affidavit of Use (hereinafter the "affidavit") indicates that the subject parcels were formerly included in a larger complex that included the Engelwood Hospital Building. Said affidavit also points out that each of the subject parcels formed a vacant lot within that complex. Dept Ex. No. 1.

4. The affidavit also indicates that applicant's Board of Directors began discussing utilization issues shortly after the date of acquisition. Said affidavit further indicates that, less than a year into these discussions, applicant "joined efforts with the Mary and Richard Dent Foundation, (hereinafter the "Foundation"), another Illinois not-for-profit corporation, and decided to develop and use the properties as second- stage housing for the homeless, with on-site, social service programs." *Id.*

5. The affidavit also indicates that:

A. Applicant held several planning and update meetings with the Foundation and other community groups, block clubs, churches. etc. after acquiring the subject properties;

B. Applicant engaged the services of an architectural firm that issued a "Building Survey and Feasibility Report" [hereinafter the "Report"] on April 9, 1992;

C. The report indicated that the subject properties were suitable to be rehabilitated, developed and used for second-stage house and social service programs as planned;

D. Applicant "plans" to use the north and east sections of the former Engelwood Hospital Building [which was located within the complex but not on the subject parcels] on a daily basis as a residential co-operative containing a mix of efficiency, one, two and three bedroom apartments, for a total of 38 apartments;

E. The south section of the former Engelwood Hospital will be used daily as a facility for social services and community activities;

F. Applicant's plans [for the south section] call for offices as well as rooms for counseling, group activities and recreation;

G. The rear section of the former Engelwood Hospital building will be used as a sheltered workshop where handicapped individuals may work and receive job training;

H. Further plans provide that the property located at 6023 South Green Street [which is located within the complex but is not part of the subject properties] will be used as a day care center which will provide a full range of day care services for single parent families and families with working parents;

I. Said plans further include a pre-school, Head Start and other after school programs primarily serving the members of the residential co-op;

J. Other plans include developing the vacant lot [wherein all of the subject properties are located] into a park, garden and/or play lot that

will mainly be used by the former Engelwood Hospital building and of the 6021 and 6033 South Green Street properties.

*Id.*

6. The Application for Property Tax Exemption (hereinafter the "Application") indicates that the subject properties formed a "vacant parking lot formerly used by Engelwood Hospital" during 1993. *Id.*

7. Applicant did not present any witnesses at the evidentiary hearing. However, its attorney made a statement indicating that:

A. Applicant and the Foundation engaged in fundraising negotiations for approximately five years;

B. The Foundation eventually "pulled out" of the project;

C. Applicant subsequently made a number of unsuccessful attempts to find appropriate funding through joint ventures with other charitable organizations;

D. Such ventures and other fund raising efforts had proven unsuccessful, at least as of the hearing date;

E. The main hospital building had been demolished at an unspecified date;

F. The demolition resulted from a court case involving the City of Chicago;

G. The subject properties were vacant of any improvements as of the hearing date;

H. An unspecified portion of the subject properties was "again" being used as the parking lot for the former hospital.

Tr. pp. 3 - 4.

**CONCLUSIONS OF LAW:**

An examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or

argument, evidence sufficient to warrant exempting the subject properties from 1993 real estate taxes. Accordingly, under the reasoning given below, the Department's determination that said premises were not "actually and exclusively used for charitable or beneficent purposes..." within the meaning of 35 **ILCS** 205/19.7 during 1993 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions

it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq.* The provisions of that statute that govern disposition of the instant proceeding are found in Section 205/19.7. In relevant part, that provision exempts the following from real estate taxation:

All property of institutions of public charity,  
all property of beneficent and charitable  
organizations, whether incorporated in this or  
any other state of the United States ... when  
such property is actually and exclusively used or  
such charitable or beneficent purposes and not  
leased or otherwise used with a view to profit  
...[.]

35 **ILCS** 205/19.7.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the appropriate exemption pertains to "institutions of public charity." Illinois courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968).

The Department has implicitly recognized that this applicant is an "institution of public charity" by basing its denial strictly on lack of exempt use. Due to the paucity of evidence contained in the instant record, I conclude that this finding was not in error, and therefore, should be affirmed.

Our courts have consistently held that it is the actual use of real estate during the tax year in question, rather than its intended use, that determines whether a given parcel (or, as in this case, parcels) is (are) exempt. Thus, evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose" and therefore, "[i]ntention to use is not the equivalent of actual use." Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (hereinafter "AMBC"); Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

The present record is completely devoid of any competent evidence establishing actual, exempt use during 1993. The Affidavit of Use is technically heresay because the affiant did not testify. However, in



the absence of any sworn testimony as to use, I must give this document its normal probative value.

The affiant, Yvette Goodrich, is president of applicant's Board of Directors. She repeatedly used the word "will" when detailing applicant's project. Ms. Goodrich also used phrases such as "plans are that" or "plans call for" when describing same. Based on these considerations, I conclude that her affidavit merely sets forth a series of speculative suppositions as to what applicant would have done with the subject properties if it had been able obtain appropriate funds.

This record also raises a great deal of speculation about the funding component. The attorney's on-the-record statement, although not given under oath, is the sole source of probative information contained in the record, at least with respect to this particular topic. It indicates that the Foundation had "pulled out" of the project at an unspecified date and demonstrates that the applicant was unable to procure substitute financing through joint ventures or other initiatives.

Business reality dictates that applicant could not have actually implemented even the beginnings of project as complex as the one described in Ms. Goodrich's affidavit without appropriate financing. Moreover, both the Application and the attorney's statement verify that the subject properties were entirely vacant, and therefore not being developed, during a continuous period which (at minimum) included the entire 1993 assessment year. In these respects then, the present case is factually distinguishable from Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987), wherein

the court held in favor of exempting a large tract of land that appellant was developing (through construction of berms and other related activities) for use as a health care facility.

This case is also distinguishable from Weslin Properties in that appellant therein ostensibly obtained whatever financing was necessary to bring its plans into fruition. In contrast, the speculative nature of this applicant's evidence falls short of establishing that it overcame this or any other impediments to accomplishing its intended use during the tax year in question. Based on these distinctions, I conclude that applicant has failed to prove that the subject parcels were actually used for exempt purposes in 1993.

In addition, the prolonged period of vacancy established herein verifies that the subject parcels were not in exempt use as a matter of law. See, AMBC, *supra*. (Vacant parcel containing boarded up church which appellant did not use throughout assessment year in question held non-exempt). Accordingly, the Department's determination denying said parcels exemption from 1993 real estate taxes should be affirmed.

WHEREFORE, for all of the above-stated reasons, it is my recommendation that Cook County Parcel Numbers 20-17-414-024 through and including 20-17-414-032 not be exempt from 1993 real estate taxes.

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Date

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Alan I. Marcus,  
Administrative Law Judge